

1 IN THE UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF TEXAS  
3 HOUSTON DIVISION

4 DAVID LIPNICKI, ET AL., )  
5 Plaintiffs, )  
6 VS. ) CIVIL ACTION NO.  
7 MERITAGE HOMES ) 3:10-CV-605  
8 CORPORATION, ET AL., )  
9 Defendants. )  
10 )  
11 )  
12 )  
13 )  
14 )  
15 )  
16 )  
17 )  
18 )  
19 )  
20 )  
21 )  
22 )  
23 )  
24 )  
25 )

OPENING STATEMENT BY MS. WILLS  
BEFORE THE HONORABLE GREGG COSTA  
NOVEMBER 12, 2014

APPEARANCES:

**FOR PLAINTIFFS:**

MS. RHONDA HUNTER WILLS,  
MS. GENEVIEVE ESTRADA, AND  
MR. ANTHONY WILLS  
Wills Law Firm, PLLC  
1776 Yorktown, Suite 570  
Houston, Texas 77056  
(713) 528-4455

MR. JOHN M. PADILLA, AND  
MR. J. MOISES CEDILLOS  
Padilla & Rodriguez, L.L.P.  
1776 Yorktown, Suite 110  
Houston, Texas 77056  
(832) 740-4301

**FOR DEFENDANTS:**

MR. SCOTT ROBERT MCLAUGHLIN,  
MS. MARLENE WILLIAMS,  
MS. KATHERINE SILVER, AND  
MR. CHEVAZZ BROWN  
Jackson Walker LLP  
1401 McKinney, Suite 1900  
Houston, Texas 77010  
(713) 752-4200

1 APPEARANCES CONTINUED:

2 **ALSO PRESENT:**

3 MR. DAVID LIPNICKI  
4 MS. DONNA ARMSTRONG  
5 MR. TIM GONZALEZ  
6 MR. MARK HOPKINS  
7 MR. MARK REYNOLDS, ESQ.  
8 MS. LAURA GOODWIN  
9 MR. TIM HERNDON

10 **COURT REPORTER:**

11 Heather Alcaraz, RMR, FCRR  
12 Official Court Reporter  
13 515 Rusk, Room 8004  
14 Houston, Texas 77002  
15 (713)250-5584

16  
17  
18  
19  
20  
21  
22  
23  
24  
25 Proceedings recorded by mechanical stenography, transcript  
produced by computer.

1                   THE COURT: So with that I am going to now allow the  
2 attorneys to make their opening statements. Plaintiffs will get  
3 to do that first.

4                   So whenever you're ready, you may begin.

5                   MS. WILLS: Thank you, Your Honor.

6                   Good morning, ladies and gentlemen of the jury. Thank  
7 you so much for being here this morning. I had the opportunity  
8 to meet you-all briefly on Monday.

9                   My name is Rhonda Wills, and I have the privilege and  
10 the honor of representing the plaintiffs in this lawsuit, and  
11 I'd like to introduce you to them. We have Tim Gonzalez, David  
12 Lipnicki, and Donna Armstrong.

13                  Now, in this lawsuit, as Judge Costa just outlined to  
14 you, there are two basic issues that you're going to be looking  
15 at. The first question is going to be: Were the plaintiffs  
16 inside salespersons or outside salespersons? And we believe  
17 that the evidence is going to show that they were inside  
18 salespersons who worked inside the model home or at the  
19 corporate office, Meritage's places of business.

20                  Now, the second issue you're going to be asked to  
21 decide is: How many hours a week were they working? The  
22 evidence is going to show that they worked significant hours  
23 each workweek. In fact, we believe the evidence is going to  
24 show that Jeanne Conger, the vice president of sales at  
25 Meritage -- she's going to testify, we believe, that in her

1 estimation, to perform a job like this would take an average of  
2 about 70 hours a week.

3 Now, I've just mentioned to you that the plaintiffs  
4 worked in a Meritage model home. Now, that's really significant  
5 because you're going to hear a lot about this model home, and  
6 that's because this model home is the heart of what they did as  
7 salespeople. This is where they officed. This was their chief  
8 sales tool.

9 The model home was everything to their job, and  
10 Meritage made sure that their business centered on this model  
11 home. And as you can see this example of a model home, it's  
12 beautiful. It's gorgeous.

13 Meritage put a great deal of money into making these  
14 model homes showpieces. Their phrase was the "wow factor."  
15 They wanted, when you walked into this model home, to say, "Wow.  
16 This is gorgeous," so you're going to hear about how they spent  
17 60, \$75,000 or more just decorating these model homes.

18 They had beautiful draperies and art pieces and -- and  
19 beautiful custom floors and lots of upgrades in them, paintings.  
20 These model homes were beautiful, absolutely gorgeous, and the  
21 reason that they did that was because that's the heart of where  
22 these people were working and where the buying public would need  
23 to come if they wanted to get a Meritage home.

24 The model home, ladies and gentlemen, was everything.  
25 It was the centerpiece, and it was where these salespeople were

1 working.

2 Now, within the model home, the tools that these  
3 salespeople needed to make sales were all contained there.  
4 First of all, you had this beautiful model home, and the  
5 evidence is going to show that Meritage expected and required  
6 them to demonstrate that model home to all the prospective  
7 buyers that came in because that's their chief selling tool.  
8 That's the way they're going to wow you and get you to want to  
9 buy a Meritage home.

10 So within that Meritage home, there were floor plans.  
11 So the first thing you need to decide is: Do I want a one  
12 story? Do I want a two story? Do I want four bedrooms, five  
13 bedrooms? And the way that you did that was you sat down with  
14 the salesperson in the model home.

15 After you've walked in the door, you've been wowed,  
16 you've taken the tour, now you sit down and go through a number  
17 of floor plans trying to figure out: What's going to work for  
18 me? What do I want? And in looking at the floor plans, the  
19 salesperson would take you into the kitchen and say, "This is  
20 how we build Meritage homes. We have an open floor plan. We  
21 have an open kitchen. This is how our homes are set up."

22 Or they'd walk you into the master bedroom and say,  
23 "You see this master bedroom? This is a standard-sized master  
24 bedroom that you're going to find in Meritage homes, and you can  
25 see how a king size bed fits in our bedrooms." And so they

1 would use the floor plans and use the model in order to help the  
2 buyer decide: What floor plan's going to work for us?

3 Next, they would use another tool found in the model  
4 home sales office, which is the elevations. Now, the elevation  
5 is how a home appears in the front and the back. So a house can  
6 look exactly the same on the inside, but the front elevation,  
7 the way that it appears on the outside, can be different.

8 Now, with most of the Meritage floor plans, typically,  
9 there were four or five different elevations or different ways  
10 that the front could look. So after sitting down and picking  
11 out a floor plan, the salesperson would then sit down with the  
12 buyer and say, "Okay. Now that we've kind of narrowed this down  
13 on floor plans, let me show you what the front of the house  
14 would look like," what your options would be to sort of figure  
15 out something that you might be interested in.

16 Now, the other reason that the elevation was so  
17 important is the evidence is going to show that within these  
18 master-planned communities where Meritage does business, you  
19 can't have the exact same house right next to each other. So  
20 there were requirements that you had to alternate elevations.

21 So the salesperson needed to sit down with you in the  
22 model to explain, "Okay. If you want to go with this floor  
23 plan, you're going to be limited to just this one elevation  
24 because we've got several already on that street where this lot  
25 is available." So sitting down in the model, looking at the

1 floor plans, looking at the elevations, absolutely critical,  
2 absolutely something that you needed to do in order to sell a  
3 Meritage home.

4 Now, also in the model sales office there would be the  
5 feature sheet, and the feature sheet would tell the buyer, okay,  
6 here are your standard features, and then as -- going through  
7 the model home, the salesperson would say, "Okay. You see these  
8 countertops? These countertops are standard. But look here at  
9 the island in the kitchen. This is your upgrade granite. For a  
10 little bit more, you could get this. But the ones off the  
11 island, those are your standard Corian countertops that you're  
12 going to get."

13 So the salesperson would use the feature sheet there  
14 in the model to explain the difference between what's going to  
15 be standard in a Meritage home and what's going to be an  
16 upgrade.

17 Also in the model home sales office they would have  
18 the price list because one of the first things a buyer wants to  
19 know is: What's the price range? What's the base price of the  
20 homes that I'm looking at? Because before you start adding  
21 upgrades or looking at anything else, you want to know: What am  
22 I looking at in terms of the base price? Because that's going  
23 to help the buyer to decide what their home choice is going to  
24 be as well.

25 And, again, these are all things in the model where

1 the salesperson would sit down with them in the model and go  
2 through these things.

3 Now, this is something called a plat map, and you're  
4 going to hear a lot about plat maps because in the model home  
5 sales office, on the wall, there was a huge version of this --  
6 huge, colorful, beautiful. And on it, it would have kind of  
7 thumbtacks or something to indicate this is available, this  
8 one's taken, and it would also indicate what floor plan had been  
9 built on each lot.

10 So this was important because you needed to, with the  
11 buyer, pick a floor plan, pick an elevation, and start looking  
12 at lots and talking about options, about which lots are  
13 available and what floor plans you can build on that lot.

14 In addition to having it on a big beautiful board that  
15 was huge in the office, they also had it in a paper form like  
16 what you see here, and they would sit down with the buyer and  
17 highlight with a highlighter these are the available lots, and  
18 these are the lots where you can build that home, or this is a  
19 lot where you could build that home to let the buyer know, okay,  
20 here are my options in terms of what lots are out there and what  
21 I might be able to build on. And this happened in the model  
22 sales office.

23 Now, before a house can actually be built on any lot,  
24 something called a lot fit analysis needed to be done. In other  
25 words, the model home was typically built on your standard

1 Meritage lot, 60 by 120, whatever it was. So when you're at the  
2 model, you can kind of look at the backyard there, and that'll  
3 give you a pretty good indication of about how much backyard  
4 you're going to have.

5 And then the salesperson can sit in the office and  
6 show you either on transparencies -- and show you essentially  
7 how that house might fit on the lot. But until an actual lot  
8 fit analysis is done, there is no way for the buyer to know  
9 exactly how that house is going to be situated on the lot, how  
10 much room there's going to be in the backyard, how much room  
11 there's going to be in the front yard. And the evidence is  
12 going to show that this lot fit analysis is done by an engineer,  
13 and then the lot actually gets staked by a surveyor.

14 Now, in addition to selling new homes, the evidence is  
15 going to show that the salespeople also were required to sell a  
16 Meritage mortgage through this company called MTH Lending. Now,  
17 MTH Lending is an affiliate company of Meritage, so Meritage had  
18 this rule for all their salespeople.

19 Everybody that buys one of our homes, you have to  
20 capture so many of them, and that could be as many as  
21 85 percent. So what they said was for up to 85 percent of the  
22 people that buy our home, you need -- you also need to convince  
23 them to get our mortgage. So these salespeople were not only  
24 selling a new home, they were required to then try to sell the  
25 buyer on buying a Meritage mortgage.

1                   This is one of the documents that they would have in  
2 the sales office, and it was a mortgage application. And the  
3 salesperson would have the prospective buyer fill out this  
4 mortgage application, and it served two purposes. One, they  
5 were required to do it. It was actually on their job  
6 evaluation.

7                   It was actually on every sale that they did. Were you  
8 successful in selling a Meritage mortgage? What is your capture  
9 rate? How many people are you getting to buy the mortgage and  
10 the house?

11                  The other reason for this is Meritage required buyers  
12 to be prequalified, which means that if you weren't qualified,  
13 they weren't going to do a contract with you. So before a  
14 contract could even be done, Meritage had to make sure you were  
15 prequalified, and one of the ways to do that was to have MTH  
16 Lending qualify you as someone who could afford the house that  
17 you were looking at.

18                  But certainly the evidence is going to show that you  
19 wanted to do this also because the last thing you want to do is  
20 go through this whole process of picking out a floor plan and an  
21 elevation and a lot only to find out that the buyer really can't  
22 qualify for the home that they're looking at. And, again, this  
23 application, in the model sales office -- sat down right there  
24 in the model sales office with the salesperson filling this out,  
25 and that's where these forms were.

1                   Now, in addition to that, there would be community  
2 information in the model sales office. That would include  
3 information about the schools in the area, the community, the  
4 community amenities, and, also, what was really important to  
5 buyers, the tax rate.

6                   So in the model sales office there would be this  
7 community information about the tax rate. And, actually, the  
8 evidence is going to show that the salespeople would actually  
9 sit and come up with some type of good-faith estimate or some  
10 type of estimate on what the monthly payments would be for  
11 whatever home or homes the buyers were looking at. And they  
12 would sit right there in their Meritage office in the model at  
13 their computer where they were given all these tools to try and  
14 calculate for the buyers: How much home can you afford?

15                  This all happened in the model sales office. All very  
16 critical to being able to sell the Meritage home.

17                  Now, if the process went well -- and I tell you  
18 sometimes people would come back four, five or even more times  
19 visiting that model, scheduling another appointment before they  
20 finally made a decision to buy. I mean, that makes sense,  
21 right?

22                  We believe the evidence is going to show: Who's going  
23 to invest \$300,000 or more after they come in one time? Most  
24 people want to come back four, five, six times, so this is a  
25 process that doesn't just happen on the first visit. But if,

1 ultimately, there is success for the salesperson, a contract is  
2 done.

3 Now, Meritage used a form sales contract, and that  
4 form sales contract was on the computer in the model sales  
5 office. So the way this worked was the salesperson would sit at  
6 their desk with the buyers in front of them typing in at their  
7 computer in the model sales office the buyers' information, all  
8 of the information about the sale. And you can't see it here,  
9 but this is about a ten-page document that had to be filled out.

10 Once it was filled out on the computer in the sales  
11 office, they would print it out. Once it was printed out, they  
12 were required to go through the contract line by line by line  
13 with the buyers right there in the sales office. Then the  
14 buyers would initial and sign each page right there in the sales  
15 office. Once the buyer had signed the contract, it would get  
16 faxed back to the corporate office to be processed from there.

17 Now, I talked a little bit about the model home. Just  
18 so you understand how important this model home was, it had to  
19 be pristine. It was so important that this model home be  
20 pristine that the salespeople had a daily and a weekly checklist  
21 that they had to follow to make sure that these model homes were  
22 perfect because the model home is the heart of everything that  
23 they did as salespeople.

24 So just to kind of give you some of these guidelines  
25 that you're going to see, the evidence is going to show on this

1 checklist one thing was a sales office must be clean at all  
2 times. Entry mats should be cleaned with a broom. Area rugs  
3 should be flattened and straightened. Make sure the accessories  
4 in place -- are in place and pictures are hung evenly.

5 They even had to make sure they fluffed the pillows  
6 every day. Ensure that all of the beds are well made. They had  
7 to even go in and straighten the towels in the bathrooms. This  
8 was the level of detail that Meritage required they put into  
9 these model homes because this is their selling tool. The model  
10 home is the heart of what they did as salespeople.

11 Now, the evidence is going to show that they were  
12 required to man this office. This model was basically the  
13 Meritage store. If you wanted to buy a Meritage house and then  
14 get a Meritage mortgage, you needed to come to their store,  
15 which is basically what the model is in the community.

16 So when you went there, Meritage expected their  
17 salespeople to be manning that office. They were supposed to be  
18 there. The sales agreement with -- the compensation agreements  
19 with these plaintiffs, you're going to see, provides that they  
20 must be present at the sales office for all business hours on  
21 all days that they are scheduled to work.

22 I don't think it can be any clearer than that. This  
23 is a job where you are to be there, and you are to man this  
24 store. And these salespeople will tell you these models are  
25 open seven days a week. Monday through Saturday they're open

1 10:00 to 7:00, and on Sundays 12:00 to 7:00.

2                   And they were responsible for that sales office every  
3 single day, and the only way that they would not work would be  
4 if they had coverage. And the evidence is going to show that  
5 oftentimes they couldn't get coverage; therefore, they had to  
6 work. And sometimes they were working six or seven days a week.

7                   The evidence is also going to show that they could be  
8 disciplined, written up, subject to disciplinary action for not  
9 being in that model sales office. Here's an example of somebody  
10 that actually got written up for not being in the sales office.

11                  It says, "Briana will ensure that the sales office is  
12 covered daily from 10:00 to 7:00, and management will be  
13 informed within a reasonable amount of time prior to her being  
14 out of the office for any reason. This is a serious situation,  
15 and there must be immediate and sustained improvement observed  
16 in all areas."

17                  This is a disciplinary action form. They were subject  
18 to being written up if they weren't in the model sales office.

19                  Here's another example. "Dan is expected to be on  
20 time to work every day and work regular business hours. The  
21 model home must be attended at all times during business hours.  
22 Leaving the model unattended by a salesperson and unpresentable  
23 leads to potential loss in sales and decreased profitability for  
24 the company."

25                  Meritage expected them to be in that model, and they

1 expected them to man it. This was their store. This was their  
2 sales tool, and they were required to be there.

3 Now, you're going to hear some evidence about a  
4 mystery shop, and what you're going to hear about the mystery  
5 shop -- which the mystery shop is where this fake buyer goes in  
6 with generally some pretty unrealistic -- an unrealistic  
7 scenario.

8 They usually show up and say something like, "I want  
9 to buy a house today. My husband's not going to be involved in  
10 the process. Oh, it's a \$300,000 house. I'm ready to buy right  
11 now -- right now today. What do you have that I can move in  
12 right now immediately? I'm ready to buy right now. I've  
13 already sold my other house. I've relocated from somewhere.  
14 I'm here. I'm ready to buy right now this instant. I don't  
15 have a realtor with me, but I'm here right now. What can I buy  
16 right now?"

17 That's just an example of the type of scenarios that  
18 mystery shoppers would show up with, and what I'd like you to  
19 remember when you're hearing about these mystery shops is that  
20 this is a one-hour visit. The mystery shop never ever results  
21 in a sale. It never results in a person ever coming back, and  
22 it would ask you to believe -- if you believe the mystery shop  
23 represents the sales process, then you would have to believe  
24 that a person comes in for one hour and makes the biggest  
25 purchasing decision of their life without ever coming back to

1 them.

2 We believe the evidence is going to show and we -- we  
3 believe the evidence is going to show that the mystery shop is  
4 nothing more than a snippet, and it is certainly not a real-life  
5 circumstance. They never have a realtor. They never actually  
6 buy a home, and they never get a mortgage, and they never go  
7 through the process, and it's nothing more than a snippet.

8 Now, the evidence is going to show that these  
9 plaintiffs were paid on a straight commission basis, which means  
10 that if they didn't sell a house and/or a mortgage, they were  
11 not going to earn any commissions.

12 Now, the evidence will show that at times they would  
13 get a draw, but a draw was basically a loan that they were  
14 given, a loan that they had to pay back to Meritage whenever  
15 they earned commissions in the future. And Meritage could  
16 actually cut off this loan or this draw any time that they chose  
17 to. So that meant that if this salesperson didn't sell a home,  
18 they weren't going to earn any commissions.

19 The evidence is also going to show that here's the  
20 system that Meritage had set up. If a prospective buyer shows  
21 up at the model, if you are the person to register that buyer,  
22 then that's your buyer, and you're the only person that has a  
23 chance to get a commission on them. It's called their "up"  
24 system.

25 And the way that the "up" system worked was you had to

1 be physically present in the model in order to get any buyers.  
2 In other words, if you were not there, you could never get a  
3 buyer and, therefore, you wouldn't get any commissions and  
4 wouldn't earn any money. So that's how the "up" system worked.

5 The way Meritage's entire sales system worked, it  
6 required the salesperson to be in the model just to get a sale  
7 and to earn any commissions. Now, the way that people got  
8 sales -- salespeople got sales was when the prospect came in,  
9 they had to get the prospective buyer to fill out one of these  
10 guest cards, and these guest cards were all kept in the model  
11 home sales office, and they had them fill these out for a couple  
12 of reasons.

13 Number one, Meritage absolutely required it  
14 100 percent of the time. You had to get every prospective buyer  
15 to fill out a guest registration card. But this was also the  
16 way that this prospective buyer got listed as the buyer of a  
17 particular salesperson.

18 If you didn't get a guest card from them, then they  
19 weren't considered your "up" or your prospective buyer, and  
20 somebody else might steal that sale away from you. So every  
21 prospective buyer that came in, the salesperson needed to get  
22 them to fill out one of these guest registration cards. It was  
23 absolutely required by Meritage.

24 Now, while these salespeople were only paid for their  
25 own sales, they only got commissions for those people that they

1 registered that they ultimately got to buy a house that closed  
2 and funded -- that's the only way they ever got a commission --  
3 they were still required by Meritage to do something called  
4 "teamwork."

5 And here's how teamwork went at Meritage: "Teamwork"  
6 meant that I, as a salesperson, not only had to work on my own  
7 sales, but I had to work on sales for other salespeople. Even  
8 though I'm never going to be paid a penny for it, I'm never  
9 going to get any commission for it, Meritage believed that  
10 because everybody's a Meritage customer, we expect all of our  
11 salespeople not to work just your own sales, but you got to help  
12 out the whole team, help everybody else out with their sales.

13 They told the salespeople that if they didn't help  
14 teammates and other people with their sales, they were subject  
15 to immediate termination, which meant that these plaintiffs  
16 weren't only working their own sales, they were helping other  
17 salespeople work sales that they were never going to get any  
18 commissions for, they were never going to get paid for.

19 Now, one of the issues that's going to come up in this  
20 case is going to be marketing. How did marketing work at  
21 Meritage? How did people -- how were people driven into these  
22 communities? How did people learn about Meritage? What made  
23 them go to a Meritage community?

24 The evidence is going to show that this is a really  
25 sophisticated business model that Meritage has for marketing.

1 They even have something called Realtor Relationship Manager.  
2 That's a person who's full-time job is to just go out all over  
3 the city and develop relationships with realtors and, from that,  
4 to then get those realtors to bring their business into the  
5 model sales offices.

6 Meritage has a very sophisticated national, regional  
7 and local marketing effort. They have billboards. They have  
8 commercials. They have advertisements.

9 They have a huge website that does Internet leads.  
10 They have a call center with a toll free number so when people  
11 call in to the call center or log in to their website, then they  
12 get directed to one of the communities where a model home office  
13 is located.

14 They also have different promotions, and they have  
15 signage. Signage is where you have a little sign saying, "Go  
16 this way to get to a Meritage home."

17 Now, you're going to hear a lot about realtor  
18 relations, and we believe that the evidence is going to show  
19 that the salespeople did help to generate traffic, but they did  
20 it by enhancing whatever this big marketing department did.

21 So, for example, here's -- here's an example of a  
22 realtor bonus program. This is an example of the type of flier  
23 that would have been given out for this realtor bonus program.  
24 The evidence is going to show that the salespeople, these  
25 plaintiffs, would e-mail these out, they would fax them out, and

1 maybe -- on a very rare occasion might drop off these fliers at  
2 a realtor office, hand them to a receptionist, hope that the  
3 receptionist was going to stick them in the boxes of the  
4 realtors, and that was it.

5 Most of the realtor interaction that these salespeople  
6 had was when the realtors brought their customers into the  
7 model. That's when they had face-to-face interaction with them.  
8 That's when they could show them their model, show them their  
9 floor plan, show them what they had to offer.

10 They also held realtor events right there in the model  
11 because you want to get the realtors to the model. That's the  
12 whole point of trying to get them to the model. So these  
13 realtor events were held in the model. They phoned them from  
14 the model.

15 The evidence, we believe, is going to show that  
16 realtors are not sitting in an office. Realtors are actually  
17 out. They're all over town. They're taking their customers  
18 everywhere. So the model salespersons are going to call them  
19 up, tell them about promotions that they have going on and try  
20 to get them to come to the office.

21 We believe the evidence is going to show that  
22 plaintiffs were inside salespersons. They worked in the model  
23 sales office selling homes and mortgages. They were responsible  
24 for basically operating a store. They rarely took customers  
25 anywhere, and if they did, it was for a very short period of

1 time because they had to man the model.

2                   If they weren't in the model, they weren't going to  
3 earn any commissions, they weren't going to get any sales. They  
4 were even subject to disciplinary action if they weren't manning  
5 that model.

6                   The evidence is going to also show that they rarely  
7 dropped off any of these flyers or brochures at realtors'  
8 offices, and if they did, it was to promote Meritage. Not to  
9 promote themselves, necessarily, but to promote Meritage. And  
10 the evidence is going to show these times when they dropped off  
11 a flier, it literally was dropping off a flier.

12                   They didn't make any presentation. They didn't meet  
13 with any realtors. The realtors weren't there. They were  
14 giving these fliers to a receptionist and hoping she wouldn't  
15 throw them in the trash.

16                   The evidence is also going to show that they never  
17 went to any customers' home or business to sell them a Meritage  
18 home or mortgage. They worked out of a model sales office.

19                   THE COURT: About five minutes.

20                   MS. WILLS: The evidence is also going to show the  
21 plaintiffs worked extremely long hours. You've heard what the  
22 stated business hours are, but the evidence is going to show  
23 they needed to arrive at least half an hour before the opening  
24 to do these opening procedures that Meritage required them to do  
25 every day.

1                   Then they would have to work through lunch. They  
2 didn't get a lunch break. The evidence is going to show there  
3 was no policy for them to take a lunch break.

4                   Typically, on most days they'd bring their lunch,  
5 stick it in the model kitchen, and when they got a chance, eat  
6 when they could kind of snacking here and there. But they  
7 didn't get a lunch break. They were manning this office. It  
8 was not very often that they were allowed to take any kind of a  
9 lunch break other than grabbing a bite when they could.

10                  The evidence is also going to show that at the end of  
11 the day, 7:00 o'clock rolls around, if there's anyone still left  
12 in that model, even if it's just somebody looking around because  
13 they're curious, the salesperson had to wait until that person  
14 had finished looking at the model. They couldn't kick somebody  
15 out and say, "Okay. It's 7:00."

16                  Instead, they had to wait, show them around, answer  
17 their questions before they could even think about closing that  
18 office. And oftentimes a lot of buyers didn't get off work  
19 until about 6:00 themselves, so they'd have to stay late for  
20 late appointments. Whatever was required, they had to stay  
21 there in order to service the customers.

22                  The evidence is going to show that they also worked  
23 six to seven days each week. We believe that the evidence is  
24 going to demonstrate that these were inside salespersons who  
25 worked very, very, very long hours. Based on Meritage's own

1 vice president of sales, it could take up to 70 hours a week to  
2 do this job.

3 I thank you in advance, ladies and gentlemen, for  
4 agreeing to hear this case and to listen to the evidence, and I  
5 appreciate the opportunity to speak to you.

6 \*\*\*

7 *(End of requested transcript.)*

8 -o0o-

9 I certify that the foregoing is a correct transcript  
10 from the record of proceedings in the above matter.

11  
12 Date: April 22, 2015

13 /s/ Heather Alcaraz  
14 Heather Alcaraz, RMR, FCRR  
Official Court Reporter

15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25